

REMARKS

Claims 1 and 23 have been amended. Claims 1- 11 have been canceled. No new matter has been added. Thus, claims 12 - 25 remain pending in the present application. In view of the above-noted amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are in condition for allowance.

Claims 12 - 19 and 21 - 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,766,174 to Perry in view of U.S. Patent No. 5,041,115 to Frigg et al. ("Frigg").

Amended claim 12 recites an intramedullary nail comprising "an elongated nail body having a proximal end, a distal end for insertion into the medullary canal, a central axis and a total length L; three locking sections along the length of the nail body between the proximal and distal ends, each locking section including a through-hole for receiving a locking screw; and two distinct intermediate sections separating the three locking sections, the intermediate sections having fewer through-holes per unit length than each of the three locking sections, wherein the locking section nearest the proximal end has a length L_5 forming an angle β with the intermediate section adjacent the proximal locking section where β is in the range of $7^\circ < \beta < 13^\circ$, and *wherein the locking section nearest the proximal end comprises an elongated through-hole.*" Support for the added limitation to claim 12 can be found in the Specification, which recites that the "[p]roximal locking section 5 has two through holes 8, one of which is an elongated one." (See Specification, ¶ [0036]).

It is respectfully submitted that Perry fails to teach or suggest an intramedullary nail comprising three locking sections "*wherein the locking section nearest the proximal end comprises an elongated through-hole,*" as recited in claim 12. Rather, Perry is only limited to disclosing circular transfixation holes 32a, 32b and circular guide holes 401, 40b, 42a, 42b.

(See Perry, col. 3, ll. 5 - 19; Figs. 1 - 7). It is therefore respectfully submitted that Perry fails to teach any “elongated through-hole,” as recited in amended claim 12.

Frigg fails to cure this deficiency in Perry. Specifically, Frigg is also limited to a device comprising only circular holes extending therethrough. It is therefore respectfully submitted that neither Perry nor Frigg, taken alone or in combination, teach or suggest an intramedullary nail comprising three locking sections “*wherein the locking section nearest the proximal end comprises an elongated through-hole,*” as recited in claim 12. It is further respectfully submitted that neither Perry nor Frigg are capable of being modified to overcome the recited deficiency. Specifically, it is respectfully submitted that an elongated hole serves a distinct purpose within an intramedullary nail (i.e., to permit positioning of a screw therethrough in a plurality of different positions). Neither Perry nor Frigg teach or suggest a need or use for such an embodiment therein.

It is therefore respectfully submitted that neither Perry nor Frigg, taken alone or in combination, teach or suggest the limitation of an intramedullary nail comprising three locking sections “*wherein the locking section nearest the proximal end comprises an elongated through-hole,*” as recited in claim 12 and that claim 12 is therefore in condition for allowance. Because claims 13 - 19 and 21 - 22 depend from and therefore include all of the limitations of claim 12, it is respectfully submitted that these claims are also allowable.

Amended claim 23 recites limitations substantially similar to claim 12, including an intramedullary nail comprising a proximal locking section “*wherein the proximal locking section comprises an elongated through-hole.*” It is therefore respectfully submitted that claim 23 is allowable over Perry and Frigg, taken alone or in combination, for the same reasons noted above with respect to claim 12. Because claim 24 depends from and therefore includes all of the limitations of claim 23, it is respectfully submitted that this claim is also allowable.

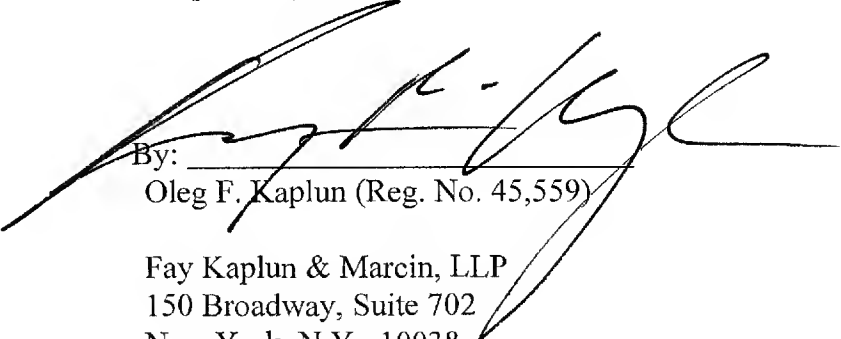
Claims 20 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Perry in view of Frigg in further view of U.S. Patent No. 6,270,499 to Leu et al. ("Leu").

Claims 20 and 25 depend from and therefore include all of the limitations of claims 12 and 23, respectively. As noted above, Perry and Frigg fail to teach or suggest the limitations of claims 12 and 23. Leu fails to overcome this deficiency. It is therefore respectfully submitted that claims 12 and 23 are allowable over Perry, Frigg and Leu, taken alone or in any combination. Claims 20 and 25 are therefore also allowable as being dependent on allowable base claims.

In light of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, and an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: Oct. 15, 2009

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